

## REMARKS

### A. Status of the Claims

Claim 1 was pending at the issuance of the instant Office Action. Claim 1 has been amended to remove reference to the compound of formula 1. Applicants note that the deletion of the compound of formula 1 from claim 1 does not imply that Applicants acquiesce to the Action's rejections with respect to the compound of formula 1. Rather, Applicants are pursuing the method of claim 1 with the use of the compound of formula 1 in copending US Application No. 10/729,213. No new matter has been introduced as a result of the aforementioned amendment.

### B. Double Patenting

The Action indicates that claim 1 is provisionally rejected under 35 USC §101 as claiming the same invention as claim 1 in copending Application No. 10/729,213. Claim 1 in the instant application has been amended to no longer recite the compound of formula 1, which is currently the only compound mentioned in claim 1 of copending application 10/729,213. Therefore, the instant application is not claiming the same invention as copending Application No. 10/729,213. Consequently, Applicants respectfully request that this ground of rejection be withdrawn.

### C. Claim 1 is not anticipated by Fridovich et al.

The Action rejects claim 1 under 35 U.S.C. § 102(a) as anticipated by Fridovich *et al.* (US 2002/0042407). Specifically, the Action asserts that Fridovich teaches the use of

Manganese meso-tetrakis-N-alkyl-pyridium based porphyrins for treating macular degeneration and edema. Claim 1, as amended, encompasses a method for treating diabetic retinopathy with the compound of formula 2. Fridovich does not teach the use of the compound of formula 2 to treat diabetic retinopathy. Therefore, claim 1 is not anticipated by Fridovich. Consequently, Applicants respectfully request that this ground of rejection be withdrawn.

**D. Claim 1 is not obvious in view of Crapo et al.**

The Action rejects claim 1 under 35 U.S.C. §103(a) as being unpatentable over Crapo *et al.* (WO 95/10185). Specifically, the Action asserts that “it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use a compound with ethyl group attached to N in the pyridine ring and the bond from the pyridine ring to porphyrin in position 2 instead of position 4 to treat conditions such as macular degeneration of the eye, retinal edema and diabetic retinopathy.” As discussed above, claim 1, as amended, encompasses a method for treating diabetic retinopathy with the compound of formula 2. Crapo does not teach or suggest that SOD mimics can be used to treat diabetic retinopathy. Consequently, Crapo does not render claim 1 obvious. Therefore, Applicants respectfully request that this ground of rejection be withdrawn.

**E. Conclusion**

This is submitted to be a complete response to the outstanding Action. Based on the foregoing arguments, the claims are believed to be in condition for allowance; a notice of allowability is therefore respectfully requested.

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The Examiner is invited to contact the undersigned attorney at (817) 615-5330 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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